

HOUSE BILL No. 1328

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-3.5.

Synopsis: Custodial interrogation recording. Provides that a statement made by a defendant during a custodial interrogation conducted by a state or local law enforcement agency is inadmissible as evidence (subject to certain exceptions) in a felony prosecution unless a video recording of the statement was made and other requirements are met. Requires law enforcement agencies to retain copies of custodial interrogation recordings for certain periods.

Effective: July 1, 2009.

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January 13, 2009, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1328

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-33-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 3.5. Recording of Custodial Interrogations**

5 **Sec. 1.** As used in this chapter, "audio recording" means a
6 recording of sounds by using electronic recording equipment.

7 **Sec. 2.** As used in this chapter, "custodial interrogation" means
8 an interrogation conducted by a law enforcement agency during
9 which:

10 (1) a reasonable person being interrogated would consider
11 himself or herself to be in custody; and

12 (2) a question is asked that is reasonably likely to elicit an
13 incriminating response from the person.

14 **Sec. 3.** As used in this chapter, "law enforcement agency" means
15 an agency or a department of any level of state or local government
16 whose principal function is the apprehension of criminal offenders.

17 **Sec. 4.** As used in this chapter, "place of detention" means:

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1 (1) a law enforcement agency station house; or
 2 (2) any other building owned or operated by the law
 3 enforcement agency;
 4 at which persons are detained in connection with criminal
 5 investigations.

6 Sec. 5. As used in this chapter, "video recording" means a
 7 recording of visual images and sounds by using electronic
 8 recording equipment.

9 Sec. 6. (a) Except as provided in subsection (b), a statement
 10 made by a defendant during a custodial interrogation is
 11 inadmissible as evidence against the defendant in a felony
 12 proceeding unless the following conditions are met:

13 (1) A complete video recording is made of the statement.

14 (2) The video recording of the defendant's statement discloses
 15 that the defendant:

16 (A) was advised of; and

17 (B) knowingly, intelligently, and voluntarily waived;
 18 the defendant's rights under *Miranda v. Arizona*, 384 U.S. 436
 19 (1966), before the defendant made the statement.

20 (3) All of the following apply to the video recording:

21 (A) The device that made the video recording was capable
 22 of making an accurate recording.

23 (B) The operator of the device that made the recording was
 24 competent.

25 (C) The recording is accurate and unaltered.

26 (D) The interrogator and the person being interrogated in
 27 the video recording had a camera focused simultaneously
 28 upon them during the entire recording.

29 (4) All voices on the video recording that are material to the
 30 custodial interrogation can be identified.

31 (5) Not later than twenty (20) days before trial, the attorney
 32 representing the defendant is provided with a true, complete,
 33 and accurate copy of every video recording of the defendant
 34 made under this chapter.

35 (b) If any part of a custodial interrogation takes place outside a
 36 place of detention, a law enforcement agency shall make an audio
 37 recording of the custodial interrogation and shall state in the audio
 38 recording why a video recording cannot be made. The court shall
 39 determine if the audio recording is admissible based on the
 40 reasonableness as to why a video recording was not made.

41 Sec. 7. A law enforcement agency shall retain a copy of a
 42 custodial interrogation of a person recorded under this chapter

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until:

(1) if the person is convicted of a felony for which the person was interrogated, the:

(A) person's conviction is final; and

(B) person has exhausted all direct and habeas corpus appeals related to the conviction; or

(2) a prosecution of the person for a crime or delinquent act for which the person was interrogated is barred by law.

Sec. 8. (a) A custodial interrogation recorded under this chapter is:

(1) confidential; and

(2) exempt from disclosure under IC 5-14-3.

(b) This section does not preclude:

(1) the state or a defendant in a felony action from obtaining a copy of a custodial interrogation recorded under this chapter for use in:

(A) a criminal action; or

(B) an appeal related to the criminal action; or

(2) a party in a civil suit from obtaining a copy of a custodial interrogation recorded under this chapter for use in:

(A) a civil suit; or

(B) an appeal related to a civil suit.

Sec. 9. (a) If a court finds by a preponderance of the evidence that a custodial interrogation of a suspect in a felony investigation did not meet the conditions set forth in section 6(a) or 6(b) of this chapter, any statements made by the suspect during or following the interrogation are inadmissible in a prosecution against the suspect.

(b) This chapter does not preclude the admission into evidence in any action of the following:

(1) A statement made by a defendant:

(A) in open court at the defendant's trial;

(B) before a grand jury; or

(C) at a preliminary hearing.

(2) A statement made during a custodial interrogation that was not recorded as provided in section 6(a) of this chapter because video recording was not feasible.

(3) A voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of a person as a witness.

(4) A spontaneous statement that is not made in response to a question.

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- 1 **(5) A statement made after questioning that is routinely asked**
2 **during the processing of the arrest of a suspect.**
3 **(6) A statement made during a custodial interrogation by a**
4 **suspect who requests, before making the statement, that the**
5 **statement not be recorded. However, the suspect's request**
6 **under this subdivision must be recorded.**
7 **(7) A statement made during a custodial interrogation that is**
8 **conducted outside Indiana.**
9 **(8) A statement concerning a murder given at a time when the**
10 **interrogator is not aware that a murder has occurred.**
11 **(9) Any other statement that is admissible under law.**
12 **The state has the burden of proving by a preponderance of the**
13 **evidence that a statement is admissible into evidence under this**
14 **subsection.**

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